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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-595

13 **MARGARET RUTH REY**
1046 Seacoast Drive, Unit F
14 Imperial Beach, CA 91932

FIRST AMENDED
ACCUSATION

15 **Registered Nurse License No. 483794**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this First Amended Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about August 31, 1992, the Board of Registered Nursing issued Registered
24 Nurse License Number 483794 to Margaret Ruth Rey (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on September 30, 2014, unless renewed.

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4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

STATUTORY PROVISIONS

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 493 of the Code states:

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1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
9 following:

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11 (f) Conviction of a felony or of any offense substantially related to the
12 qualifications, functions, and duties of a registered nurse, in which event the record of
13 the conviction shall be conclusive evidence thereof.

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15 10. Section 2762 of the Code states:

16 In addition to other acts constituting unprofessional conduct within the meaning
17 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
18 licensed under this chapter to do any of the following:

19

20 (b) Use any controlled substance as defined in Division 10 (commencing with
21 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
22 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
23 dangerous or injurious to himself or herself, any other person, or the public or to the
24 extent that such use impairs his or her ability to conduct with safety to the public the
25 practice authorized by his or her license.

26 (c) Be convicted of a criminal offense involving the prescription, consumption,
27 or self-administration of any of the substances described in subdivisions (a) and (b) of
28 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

. . . .

11. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere
made to a charge substantially related to the qualifications, functions and duties of a
registered nurse is deemed to be a conviction within the meaning of this article. The
board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the

1 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
2 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

3 12. Section 2770.11 of the Code states:

4 (a) Each registered nurse who requests participation in a diversion program
5 shall agree to cooperate with the rehabilitation program designed by the committee
6 and approved by the program manager. Any failure to comply with the provisions of
7 rehabilitation program may result in termination of the registered nurse's participation
in a program. The name and license number of a registered nurse who is terminated
for any reason, other than successful completion, shall be reported to the board's
enforcement program.

8 (b) If the program manager determines that a registered nurse, who is denied
9 admission into the program or terminated from the program, presents a threat to the
10 public or his or her own health and safety, the program manager shall report the name
11 and license number, along with a copy of all diversion records for that registered
nurse, to the board's enforcement program. The board may use any of the records it
receives under this subdivision in any disciplinary proceeding.

12 REGULATORY PROVISIONS

13 13. California Code of Regulations, title 16, section 1444, states:

14 A conviction or act shall be considered to be substantially related to the
15 qualifications, functions or duties of a registered nurse if to a substantial degree it
16 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

17 (a) Assaultive or abusive conduct including, but not limited to, those violations
18 listed in subdivision (d) of Penal Code Section 11160.

19 (b) Failure to comply with any mandatory reporting requirements.

20 (c) Theft, dishonesty, fraud, or deceit.

21 (d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

22 14. California Code of Regulations, title 16, section 1445 states:

23

24 (b) When considering the suspension or revocation of a license on the grounds
25 that a registered nurse has been convicted of a crime, the board, in evaluating the
26 rehabilitation of such person and his/her eligibility for a license will consider the
following criteria:

27 (1) Nature and severity of the act(s) or offense(s).

28 (2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee has complied with any terms of parole, probation,
3 restitution or any other sanctions lawfully imposed against the licensee.

4 (5) If applicable, evidence of expungement proceedings pursuant to Section
5 1203.4 of the Penal Code.

6 (6) Evidence, if any, of rehabilitation submitted by the licensee.

7 COSTS

8 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
12 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
13 included in a stipulated settlement.

14 FIRST CAUSE FOR DISCIPLINE

15 (October 31, 2012 Criminal Conviction for Drug-Related Reckless Driving on May 27, 2012)

16 16. Respondent has subjected her license to disciplinary action under sections 490 and
17 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially related
18 to the qualifications, functions, and duties of a registered nurse. The circumstances are as
19 follows:

20 a. On or about October 31, 2012, in a criminal proceeding entitled *People of the*
21 *State of California v. Margaret Ruth Rey*, in San Diego County Superior Court, case number
22 S258036, Respondent was convicted on her plea of guilty of violating Vehicle Code section
23 23103, subdivision (a), reckless driving, a misdemeanor, a charge substituted in place of a
24 violation of Vehicle Code section 23152, subdivision (a) driving under the influence, pursuant to
25 Vehicle Code section 23103.5. The court dismissed the original charges of violating Vehicle
26 Code section 23152, subdivision (a), and Health and Safety Code section 11550, subdivision (a),
27 under the influence of a controlled substance, to wit, hydrocodone, pursuant to a plea agreement.

28 b. As a result of the conviction, on or about October 31, 2012, Respondent was
granted three years summary probation and ordered to complete the education component of the

1 First Conviction Program. The court did not order the full program because Respondent
2 represented to the court that she was enrolled in an "intense" nurse diversion program.

3 Respondent was further ordered to attend a MADD Victim Impact Panel session, pay fees, fines,
4 and restitution in the amount of \$1,140, and comply with standard DUI probation terms.

5 c. The facts that led to the conviction are that on or about the morning of May 27,
6 2012, a deputy with the San Diego County Sheriff's Department was dispatched to investigate a
7 vehicle collision in Imperial Beach. Upon arrival, the deputy made contact with the driver
8 (Respondent), who had driven her vehicle into an unoccupied truck that was legally parked on the
9 street. The deputy noted that Respondent could barely keep her eyes open. Respondent was not
10 sure where she was, and she was not aware that she had collided with another vehicle.
11 Respondent told the deputy that she had consumed prescription medications, including
12 hydrocodone, prior to leaving work at a hospital. Respondent submitted to a series of field
13 sobriety tests, all of which she performed poorly. Respondent was arrested for driving under the
14 influence of prescription medications. Respondent provided a blood sample during booking.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of a Controlled Substance)**

17 17. Respondent has subjected her license to disciplinary action under section 2762,
18 subdivision (b) of the Code for unprofessional conduct in that on or about May 27, 2012, as
19 described in paragraph 16, above, Respondent operated a motor vehicle while significantly
20 impaired by the controlled substance hydrocodone.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Drug-Related Criminal Conviction)**

23 18. Respondent has subjected her license to disciplinary action under section 2762,
24 subdivision (c) of the Code for unprofessional conduct in that on or about October 31, 2012, as
25 described in paragraph 16, above, Respondent was convicted of a crime related to her use of
26 prescription medications and controlled substances.

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DISCIPLINARY CONSIDERATIONS

19. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that Respondent was terminated from its Nurse Diversion Program as a public safety risk on December 7, 2012. The circumstances are as follows:

20. As a result of Respondent's arrest for driving under the influence of a controlled substance, as described in paragraph 16, above, on or about October 8, 2012, Respondent received a Board referral to their Diversion Program.¹ On October 22, 2012, Respondent voluntarily completed an intake assessment with a Maximus compliance case manager (CCM). Respondent verbally agreed to the terms and conditions of the diversion program. Respondent provided a list of medications that were currently prescribed to her including Vicodin, Xanax, Soma, and Ambien. On October 31 2012, Respondent signed the Diversion Program Recovery Terms and Conditions Agreement, effective date October 22, 2012.

21. On or about November 28, 2012, Respondent tested positive for butalbital, a barbiturate, a medication that was not disclosed by Respondent. The positive test was deemed a relapse by the Diversion Program. Respondent was directed to immediately enroll in a 30-day inpatient treatment program as remediation. Respondent failed to comply with the directive. Further, on her weekly check-in calls with the CCM, Respondent was reported having slurred speech but she denied being impaired. Respondent claimed she was tapering herself off of Vicodin, but she never provided the requested taper prescription form from a physician. Respondent failed to return the required consent forms to Maximus. Respondent failed to check-in with FirstLab (the program's drug testing facility) on several occasions, and missed a test on November 30, 2012. Respondent quit attending the Nurse Support Group meetings, and quit responding to inquiries from the diversion program. On December 7, 2012, the Diversion

¹ The Diversion Program is a voluntary, confidential program for registered nurses whose practice may be impaired due to chemical dependency or mental illness. The goal of the Diversion Program is to protect the public by early identification of impaired registered nurses and by providing these nurses access to appropriate intervention programs and treatment services. Public safety is protected by suspension of practice, when needed, and by careful monitoring of the nurse. The Diversion Program is currently managed by Maximus.

1 Evaluation Committee recommended that Respondent's case be closed as a public health risk due
2 to Respondent's non-compliance with its terms.

3 **PRAYER**

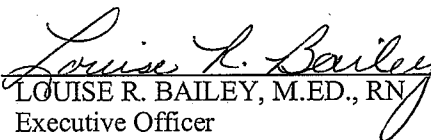
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 483794, issued to
7 Margaret Ruth Rey;

8 2. Ordering Margaret Ruth Rey to pay the Board of Registered Nursing the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3;

11 3. Taking such other and further action as deemed necessary and proper.
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14 DATED: APRIL 17, 2013


15 LOUISE R. BAILEY, M.ED., RN
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California
20 Complainant

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